IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of decision:- 02.09.2011

(1) Crl. Appeal No. 909-SB of 2003

Balbir Singh and others

....Appellants

Vs.

State of Punjab

....Respondent

2. Crl. Appeal No. 1109-SB of 2003

Gurmit Singh and another

....Appellants

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE A.N. JINDAL

Present:- Mr. M.S. Sidhu, Advocate,
for the appellants (in CRA No.909-SB of 2003).

None for the appellants (In CRA No.1109-SB of 2003).

Mr. Baljinder Singh Sra, Addl. A.G., Punjab.

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A.N. JINDAL, J (ORAL)

This judgment shall dispose of Crl. Appeal Nos. 909 and 1109-SB of 2003, as both have arisen out of the same judgment. For reference, facts are taken from Criminal Appeal No. 909-SB of 2003.

These appeals are directed against the judgment dated 30.04.2003 passed by the Additional Sessions Judge, Ferozepur, convicting appellant-accused (hereinafter referred to as 'the accused) under Sections 304

Part-I, 148 and 149 IPC and sentencing them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- and in default thereof, to further undergo rigorous imprisonment for a period of four months under Section 148 IPC. Accused Gurmit Singh, Balbir Singh, Surjit Singh alias Seeta and Gurdip Singh alias Dalip Singh were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.2000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year under Section 304 Part-I IPC. Raja Singh accused was further sentenced to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.1500/- and in default thereof, to further undergo rigorous imprisonment for a period of nine months under Section 304 Part-I read with Section 149 IPC.

The present case is an off shoot of the cross case registered at the instance of Darshan Singh vide FIR No.68 dated 15.07.1997, under Sections 302, 323, 427, 447, 148, 149 IPC and Section 25 and 27 of the Arms Act, 1959.

The prosecution story, in brief, is that Darshan Singh-complainant has been residing in village Mudki. His father Bachan Singh had purchased 13 Kanals of land from the grandson of Balbir Singh, resident of village Deepanwali. Mutation of the said land was sanctioned in favour of the vendee Bachan Singh, on the basis of the registered sale deed. However, Dula Singh etc. were in possession of the land in dispute and they did not agree to relinquish the possession. Two months prior to the occurrence, this land was ploughed by Bachan Singh, in order to ascertain possession over the same. Bachan Singh also moved an application for correction of Khasra Girdawari before the Tehsildar and in that connection, the latter was to visit the land in dispute on 16.07.1997 for inspecting the same.

On 15.07.1997 at about 4.00 P.M., complainant-Darshan Singh accompanied by his father Bachan Singh, had entered the land on a tractor for ploughing the same with the help of discs attached to the tractor. At that time, Bachan Singh armed with a licensed gun was also present to guard against them. In order to help them, one Ajit Singh @ Kaka was also with them. Darshan Singh was ploughing the land, whereas others were standing on the eastern side of the watercourse. Meanwhile, the accused came there. Gurmit Singh was armed with ganthali, Bhajan Singh and Surjit Singh were armed with selas. Gurdeep Singh was armed with gandasa. Dula Singh, Raja Singh and Balbir Singh alias Beera were armed with sticks. Dula Singh raised lalkara exhorting his co-accused not to spare the complainant party for forcibly entering into their possession. Gurmit Singh, Bhajan Singh and Gurdeep Singh tried to assault Bachan Singh, who requested them not to enter into a quarrel and solve the matter by dialogue, whereas the accused did not pay any heed to his requests. Gurdeep Singh gave a gandasa blow on the left side of his forehead. Bachan Singh fired a shot from his .12 bore gun in his defence and the shot hit Bhajan Singh, who died at the spot. Gurdeep Singh gave another blow with his gandasa in the middle of his head, as a result of which, Bachan Singh fell down in the watercourse itself. Then, Sita Singh-accused gave two blows with his sela on the middle of forehead and left side of his (Bachan Singh's) neck. Beera Singh-accused gave dang blow on the left side of his jaw and Gurmeet Singh gave blow with his gandhali on his left eyebrow. Gurdeep Singh inflicted a gandasa blow on the right side and left side of his head. Gurmit Singh again inflicted a gandhali blow on his left thigh. Consequently, Bachan Singh succumbed to his injuries. The accused persons assaulted the complainant also. Raja Singh gave blow with his dang on his right arm. Gurdeep Singh gave a blow with his gandasa,

which he tried to shield with the help of his hand and in that process, he received injury in the middle finger of his right hand from the blunt side of his gandasa. The complainant saved himself by running from the spot and narrated the whole occurrence to his paternal uncle Chand Singh. On the aforesaid statement made before Balbir Singh, SHO (PW-10), FIR was registered against the accused. The SHO reached the place of occurrence; prepared the inquest in respect of the body of Bachan Singh; prepared the rough site plan; recorded the statements of the witnesses and submitted a charge report against the accused.

On commitment, the accused were charged for the offences under Sections 302, 148 and 149 IPC, to which they pleaded not guilty and claimed trial. During trial, Dula Singh-accused died, therefore, proceedings against him stood abated.

In order to substantiate the charges against the other accused, the prosecution examined Dr. Jasbir Singh (PW-1), Raja Singh, Constable (PW-2), Dr. Ramesh Kumar Bhargav (PW-3), Lakhbir Singh, Patwari (PW-4), Gamdoor Singh, HC (PW-5), Tarsem Singh, HC (PW-6), Darshan Singh (PW-7), Deepak Kumar, Reader (PW-8), Ishwar Chander, Clerk (PW-9) and Balbir Singh, SI (PW-10).

When examined under Section 313 Cr.P.C., all the incriminating circumstances appearing against the accused were put to them, to which, they pleaded not guilty. The accused did not examine any witness in defence. However, they tendered in evidence certified copies of the judgment dated 17.11.1997 Ex.DG, judgment dated 30.04.2002 Ex.DH, Jamabandi for the year 1995-96 Ex.DJ, Khasra Girdawari for the year 1997-98 Ex.DK, order dated 25.04.1996 Ex.DL and copy of the postmortem report Mark-A.

Here it may be noticed that the complainant party in this case was convicted for the offences under Sections 447 and 148 IPC and their appeal has also been dismissed by this Court vide judgment of even date.

The motive behind the occurrence is the land dispute, which has not been denied by both the parties. It is also not in much dispute that the occurrence took place on the disputed land which was in possession of the accused party. The said possession was even upheld by the Civil Court. Jamabandi for the year 1995-96 Ex.DJ, Khasra Girdawari for the year 1997-98 Ex.DK and the copies of the judgments dated 17.11.1997 Ex.DG and 30.04.2002 Ex.DH also prove possession of the accused over the land in dispute. Occurrence in this case is also not disputed. Bachan Singh, in order to ascertain possession over the land, had moved an application before the Tehsildar and he for taking action over the said application, was to visit the spot on 16.07.1997. As such, in order to project before the Tehsildar that they are in possession, Bachan Singh (deceased) alongwith his son and others appears to had gone over the land and started ploughing. While coming to know that the complainant party had trespassed into the land and were damaging the crop with the help of discs of the tractor, it was quite natural that the accused party was to go to the land in dispute to prevent Bachan Singh etc. not to damage the crop and not to disturb their possession. It is also evident from the evidence of the complainant itself that out of the complainant party, Bachan Singh was armed with .12 bore gun and eight cartridges out of which, he fired two at Bhajan Singh and killed him there, whereas, the accused party was not armed with any firearm. Since the accused party was in possession of the land, therefore, they were well within their rights to protect their possession and agitate the trespass by the complainant party over the land in question.

Section 97 of the Indian Penal Code (herein referred as 'the Code') provides that every person has a right, subject to the restrictions contained in Section 99 of the Code to defend immovable property of himself against any act, which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft.

In the present case, when the complainant party was not in possession over the property, but they were only ascertaining their possession on the basis of a sale deed, they having lost in the Civil Court wanted to ascertain their possession and in order to project before the Tehsildar that they are in possession, had gone over the land with the tractor and the discs with an intention to destroy the crops standing over the land in dispute. Bachan Singh was armed with a firearm i.e. .12 bore gun, whereas the accused party was armed with gandasa, gandhali, sticks and selas. From the accused side, Bhajan Singh died, whereas from the complainant side, Bachan Singh died. The occurrence had taken place in the land which was in possession of the accused party.

Now the question remains to be determined is, "whether the accused party exceeded the private defence in causing injuries to Bachan Singh, which resulted into his death?" Darshan Singh, while appearing as PW-7, has disclosed in the Court that first of all his father Bachan Singh was attacked by the accused persons; Gurdeep Singh-accused gave a gandasa blow on the right side of his forehead and while his father was lying on the ground, he fired a shot which hit Bhajan Singh, thereby killing him. But, Darshan Singh, then in the next breath, has stated that after giving a gandasa on the forehead of Bachan Singh, he gave another gandasa blow on his head, therefore, he fell down in the watercourse.

On scrutiny of this part of the statement, it transpires that the statement is self contradictory. Had Gurdeep Singh caused such fatal injuries on the person of Bachan Singh, then apparently, he could not be in a position to fire a shot from his gun and then again to load it and fire another shot. During the postmortem examination, two injuries were found on the forehead and one injury was found on his head. The injuries further reveal that underlying bones in respect of those injuries were found to be fractured. Thus, the injuries appear to have been given with such a force that Bachan Singh may not have remained in a position to use the gun, held by him and to aim at Bhajan Singh. Thus, in all probabilities, Bachan Singh had fired a shot killing Bhajan Singh from the accused side. Thereafter, Gurdeep Singh etc. from the accused side, had caused injuries to Bachan Singh in the right of private defence. All this goes to show that the complainant party was aggressor in the case.

The right of self defence is a very valuable right, serving a social purpose and could not be construed narrowly (see Vidhya Singh Vs. State of M.P., (AIR 1971 SC 1857). Only the facts and circumstances and the provocation given by a party could determine the situation. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary, was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with

any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances. Similar observations were made by the Hon'ble Apex Court in case ***Ranveer Singh Vs. State of M.P.***, 2009 (1) RCR (Criminal) 860. The Hon'ble Apex Court in the aforesaid judgment, while discussing the words of Russel on Crime, 11th Edition Volume I at page 49 further observed as under:-

> "15. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived."

In another case titled as ***Darshan Singh Vs. State of Punjab & another,*** 2010 (1) RCR (Criminal) 751, the Hon'ble Supreme Court while holding that the law does not require a law abiding citizen to behave like a coward when confronted with an imminent unlawful aggression and further holding that there is nothing more degrading to the human spirit than to run away in face of danger, laid down the following guidelines to attract the situation, where the right of private defence could be exercised:-

> "(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countriees- All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation – In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence – It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence, inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

(xi) The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of materials available on record.

(xii) Accused need not prove the existence of the right of private defence beyond reasonable doubt – It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

In the instant case, Bachan Singh was aggressor from the very beginning. He never condoned this act. Though the land was in possession of the accused party, yet on the strength of a sale deed purported to have been executed by the grandson of Balbir Singh, he started claiming possession over the land. Litigation commenced between the parties, but he lost the same. The judgments in this regard have been proved on record. Subsequently, in order to claim his right over the disputed land, Bachan Singh for getting the Khasra Girdawari changed, moved an application before the Tehsildar, Ferozepur, who was to visit the land for spot inspection on 16.07.1997. As such, one day prior to that, in order to show that he was in physical possession of the land in question, armed with a gun, took his son Darshan Singh and two other relatives namely Ajit Singh and Kaka Singh at the spot. Darshan Singh started ploughing the crop standing in the land, whereas he while armed with a gun stood as guard. In these circumstances, it was obvious that in order to protect their possession, to prevent the entry and damage by the complainant party over the land in dispute and to raise the protest, the accused party went to the field over which they had lawful possession and their possession was settled by the Civil Court. Pre-meditation of Bachan Singh is proved from the fact that he was present there to guard and standing by the side of the watercourse along with the gun.

Therefore, without hearing the request of Bhajan Singh from the side of accused party that the matter should be settled by dialogue, he fired two gun shots at him. Since he was equipped with more cartridges, therefore, apprehending that Bachan Singh may not cause any other casualty, the accused party attacked him and caused him injuries. Therefore, accused Gurdeep Singh and Gurmit Singh cannot be said to have caused more harm than what was necessary, and they exercised the right of private defence of property; of their own body and body of others. They did not cause any harm to Darshan Singh, who was damaging the crop and the other persons who were helping him, as they had not caused any injuries to them. As such, the accused party cannot be held to be the aggressors. They were well within their rights to exercise the right of private defence. The story set up by the complainant party that first of all Bhajan Singh opened the attack, is not believable. This version, set up by the complainant cannot be accepted, as Bachan Singh while suffering gandasa injuries on his head and forehead, would not be in a position to fire with the shot and then to fire again after re-loading it. Thus, the story set up by the complainant party is not correct.

In the wake of the aforesaid discussion, while extending benefit of doubt to the accused, both the appeals are accepted; the impugned judgment is set aside and the accused are acquitted of the charges framed against them.

(A.N.JINDAL)
JUDGE

02.09.2011
ajp